

November 10, 2022

VIA HAND DELIVERY

Zoning Board of Adjustment
City of Manchester
One City Hall Plaza
Manchester, NH 03101

RE: **Motion for Rehearing**

Variance Application of Air Tight, LLC (the "Applicant")

Property at 1228 a/k/a 1230 Elm Street, Manchester, NH (the "Property")

Case Number ZBA2022-138

(Collectively with all supplements filed on behalf of the Appellant (as defined below),
the "Application")

Greetings Board Members:

By this correspondence, Amoskeag Terrace a/k/a Amoskeag Terrace Condominium Association ("Appellant") moves for rehearing by the Zoning Board of Adjustment (the "Board") of its decision rendered on or about October 20, 2022 with respect to the Application, a copy of which is attached as Exhibit A (the "Decision"). Pursuant to RSA 677:2, the Board has authority to grant this Motion for Rehearing in order to correct errors prior to any party appealing the Board's decision to the Superior Court. Rochester City Council v. Rochester Zoning Board of Adjustment. 171 N.H. 271, 278 (2018). Pursuant to RSA 677:2, the Appellant, as an association of direct abutters and persons aggrieved by the Board's Decision, is authorized to file this Motion for Rehearing. **The Appellant hereby moves for a rehearing on the Decision and alleges that the Board made factual and legal errors in issuing the Decision as particularly set forth below.**

Introduction and Background Information

The Property is depicted as Tax Map 157, Lot 5 of the Manchester, NH Tax Maps, a copy of which is attached hereto as Exhibit B. The Appellant condominium association comprises forty (40) single-family condominium units.

The Property is located in the CBD Zone. It is comprised of a land area of approximately 19,612 square feet (according to the Application). It is improved with a five-story office building constructed in 1973. It comprises approximately 115,028 square feet of gross building area (according to the Assessor's records).

The Application proposes a conversion of the current use of the Property from office to approximately 100 multi-family housing units comprised of approximately 104,928 square feet of living space, with approximately 28 parking spaces for that residential and commercial use.¹

The City of Manchester Zoning Ordinance, amended through September 7, 2021 (the "Ordinance") permits multifamily dwellings in CBD zones as long as there is a conditional use permit issued by the Planning Board. Pursuant to Section 8.04 of the Ordinance, multi-family use is only allowed at a density of three units for the first 3,000 square feet of lot size, and one unit for every 500 square feet of lot size thereafter. Thus, the Ordinance allows for the 19,612 square foot Property to host 36 multi-family units, where the Application initially sought 110 units and the Decision ultimately allowed for 100 units. Under Section 8.04 of the Ordinance, 100 multi-family units requires a lot size of 51,500 square feet.

At the Board's October 13, 2022 meeting, a number of unit owners comprising the Appellant articulated specific impacts the variance would create, including impacts to parking, overuse of the alley known as N. Hampshire Lane, destruction of privately owned green space at Amoskeag Terrace by pets (specifically dogs), and the compatibility of the proposed multi-family use at the proposed scale. The Board's analysis of the variance criteria set forth in 674:33 I(a)(2) disregarded these impacts and generally focused on one concern – "housing."

The determination of whether the City of Manchester is in need of more housing, and to what extent, is not a matter within the jurisdiction of the Board under New Hampshire law. The jurisdiction lies squarely with the legislature which enacts the Ordinance, and that legislature is the body of residents of the City of Manchester. The Board's jurisdiction to vary from the Ordinance is strictly limited to the criteria set forth in RSA 674:33, I. That law is not preempted by the need for housing.

¹ The zoning board decision did not impose conditions as to the parking, unit numbers, and commercial use. Exhibit A.

Grounds for Rehearing

Count 1. The Board's Notice of Decision is unlawful because it violates RSA 676:3, I by not stating specific findings in the Decision.

The Decision is unlawful as a violation of New Hampshire law. RSA 676:3, I requires the Board to have made and stated in the Decision specific findings of fact in support of that Decision. RSA 676:3, I provides, in pertinent part²:

The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. The decision shall include specific written findings of fact that support the decision.

The Decision does not articulate specific written findings. The Decision, therefore, is legally insufficient under RSA 676:3, I.

Count 2. The Board's Notice of Decision is unlawful and unreasonable because it violates New Hampshire law by not providing findings in support of the Decision that affords an appellant the opportunity for meaningful review.

The Decision is unlawful and unreasonable because it is inadequate for the Appellant to pursue meaningful judicial review of its merits (if any). Even where specific findings of fact are not required by statute, the New Hampshire Supreme Court has held that findings which provide a disclosure of the basis for the Board's decision are necessary for the Appellant to meaningfully pursue judicial review. *Alcorn v. Rochester*, 114 N.H. 491, 495 (1974). The failure of a board to disclose the basis for its decision prevents the appellant of that decision from knowing the specific requirement or requirements the Board found to have been met, and thus denies those appellants meaningful judicial review. *Id.*

In the case at hand, the Decision is limited to the following pronouncement:

You are hereby notified that the request of (Applicant) to create 100 dwelling units in an existing building on a lot with 19,612 SF where 51,500 SF is required in the CBD zoning district from the terms of Section(s) 8.04 Minimum Buildable Lot Area of the Zoning Ordinance of the City of Manchester, New Hampshire, has been GRANTED as per documents submitted through September 16, 2022 in accordance with Article V of the Board's BY-LAWS on October 13, 2022.

² The remainder of the statute provides for specific remedies applicable to a denial of an application, which are not relevant to the Decision, which is an approval.

The Board's Decision is a single statement devoid of findings of fact. The Board provides no basis or factual or legal findings for its Decision. Consequently, Appellant is denied meaningful judicial review. The Board has withheld the grounds upon which it relied in making its Decision. This failure by the Board renders the Decision unlawful and unreasonable, and violates the well-settled law set forth in Alcorn v. Rochester.

Count 3. The Board failed to properly consider the first prong of the variance criteria set forth in RSA 674:33, I(a)(2)(A).

RSA 674:33, I(a)(2)(A) requires the Board to make specific findings and articulate how granting the variance will not be contrary to the public interest. It is well settled that a variance will be contrary to the public interest if it conflicts with or violates the ordinance's basic zoning objectives. Chester Rod & Gun Club v. Town of Chester, 152 NH 577, 581 (2005). The Ordinance's "basic zoning objectives" are set forth in Article 1.02 thereof, a copy of which is attached hereto as Exhibit C.

It is critical to note the following basic zoning objectives articulated in Section 1.02 of the 2021 Ordinance:

- A – Encouraging and preserving the convenience, comfort, and safety of the residents of the City of Manchester
- B – Protecting and promoting the public from nuisance producing uses of the land, such as from fires, panic, explosion, and noxious fumes.
- C – Promoting adequate light, air, privacy and convenience of access to property.
- D – Preventing undue concentration of population, overcrowding of land, and lessening congestion in the streets
- E – Facilitating the adequate provision of transportation and other public requirements
- G – Insuring that any development is compatible in use, scale, and building design with the neighborhood in which it is located
- H – Providing for planned, orderly, and beneficial growth

Here, the Appellants raised significant issues concerning impacts to parking in the vicinity, overuse of the alley known as N. Hampshire Lane, destruction of privately owned green space at Amoskeag Terrace by pets (specifically dogs), and the incompatibility of the proposed multi-

family use at the proposed scale. The minutes of the Board’s meeting reflect that these issues were raised and acknowledged by the Applicant and at least one Board member. Yet the Board failed to consider these impacts against the basic zoning objectives set forth in Section 1.02.

The Board’s analysis of the criteria of RSA 674:33, I(a)(2)(A) was limited to the following: “I do think the public interest is served, the greater public interest.” Nothing more was stated. No analysis of the basic zoning objectives of the Ordinance was undertaken. See Zoning Board’s minutes, attached as Exhibit D.

Had the Board undertaken the requisite analysis of these impacts against the Ordinance’s basic zoning objectives, the only conclusions would have been:

1. The lack of parking to support 100 multi-family units will have a tremendous negative impact upon the safety, convenience, congestion, transportation, and comfort of the locality, which already suffers from a dire shortage of parking in a city that is precisely not “walkable.” It is true that the Ordinance does not require parking for multi-family use in the CBD district when the property is in compliance with all other zoning requirements. However, it is well-settled as a matter of law that language of a law or rule is not read or interpreted in a vacuum. Rules and regulations are not to be interpreted in isolation. Appeal of Kat Paw Acres Trust, 156 N.H. 536, 537 (2007). Courts have long recognized the idea of interpreting statutes and regulations in the context of the overall regulatory scheme and not in isolation in order “to effectuate the overall legislative purpose and avoid an absurd or unjust result.” Appeal of Nguyen, 170 N.H. 238, 246 (2017); N.H. Resident L.P. of the Lyme Timber Co. v. N.H. Dep’t of Revenue Admin., 162 N.H. 98, 101 (2011). The Ordinance’s lack of a requirement for parking in the CBD district is intrinsically linked to the density limitations of the CBD district. When almost tripling the density allowed by the Ordinance, RSA 674:33, I necessarily requires that parking be considered to accommodate the increase in density. The Ordinance currently grants an exemption from parking requirements presuming that the density limitations are not exceeded. To allow for an increase in density without accounting for other foundational CBD zoning requirements ignores the immense negative impact to the community and is against the public interest.

2. The overuse of the alley known as N. Hampshire Lane by adding 200 or more residents will have a significant negative impact upon the safety, congestion, and potential nuisances to the community. Resident deliveries and access along with significantly increased trash generation and removal activity will impact the safe and convenient access of current residents and public safety personnel. While it is true these are issues to be addressed by Planning Boards, the Board erred in not considering that these impacts are magnified by density, which is the subject of the Decision.

3. Granting a variance to essentially triple the permitted density of the Property for multi-family use will inevitably result in the destruction of privately owned green space at Amoskeag

Terrace by pets, specifically from dog's urinating on grassed areas. The Applicant conceded as much and stated that the residents would not be allowed to trespass on the green space of the Appellants (as though such a proclaimed prohibition would actually prevent the activity). There is in fact no public grassed areas for dogs to use other than Pulaski Park, located approximately one-half mile from the Property.

4. The proposed multi-family use, at a scale of 100 units, is not compatible with the surrounding community in the CBD district without addressing the need for parking, green space, and adequate access for basic human services across the community.

Without a meaningful way to address the concerns set forth above, the proposed 100 unit multi-family use at 1228 a/k/a 1230 Elm Street cannot be found not to violate the Ordinance's basic zoning objectives set forth in Section 1.02 thereof.

Count 4. The Board failed to properly consider the second prong of the variance criteria set forth in RSA 674:33, I(a)(2)(B).

The New Hampshire Supreme Court has noted that a determination of whether the spirit of the Ordinance is observed is largely similar to determining whether the variance is contrary to the public interest. Chester Rod & Gun Club v. Town of Chester, 152 NH 577, 581 (2005). In the case at hand, the Board undertook no meaningful discussion or analysis of the spirit of the Ordinance. Generally, one Board member cited a vague need for more "housing" as the justification for granting a variance to almost triple the density allowed, without addressing the need to mitigate the impacts of such a variance – impacts which the Applicant has conceded are real. It is unreasonable and unlawful to conclude that the spirit of the Ordinance is observed by mentioning the word "housing" as justification for ignoring the objectives and provisions of the Ordinance wholesale.

Count 5. The Board failed to properly consider the third prong of the variance criteria set forth in RSA 674:33, I(a)(2)(C).

The guiding rule on determining substantial justice is weighing the loss to the Applicant versus the gain to the general public. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 515 (2011). In the case at hand, the Board has grossly misinterpreted this criteria as a matter of law. The individual or Applicant would suffer no loss from a denial of its Application, as it has operated the Property for more than two decades in its current state. Nonetheless, the Applicant now seeks the variance to address and offset current economic conditions at the expense of the public in the neighborhood by virtue of the impacts discussed above.

The Board appears motivated on its perception of a need for housing as a trump card outweighing requirements of the Ordinance. As a matter of law, the Board is required to weigh the loss to the Applicant against the gain to the general public, the “need for housing” rationale is a fallacy. Thirty-six units are allowed without the variance. An additional 64 units would be permitted with the benefit of the variance. The only “benefit” of the variance is to the prospective occupants of those 64 units. The Applicant hedges economic pressures at the expense of the residents of the City.

The application of the requisite legal and factual analysis of this criteria yields only one possible result: The Applicant’s purported loss of having to weather the economic pressures that the rest of the state faces does not outweigh the interests of the public that Ordinance sets forth in Section 1.02, namely the safe, convenient, nuisance free access to land without the overcrowding and over congestion of streets that result from poor planning. The evidence on the record does not support a finding to the contrary.

Count 6. The Board failed to properly consider the fourth prong of the variance criteria set forth in RSA 674:33, I(a)(2)(D).

The Board’s reasoning in determining whether the value of surrounding properties would be diminished is unreasonable and unsupportable as a matter of fact. The sole rationale declared by the Board during its meeting with respect to this prong of RSA 674:33, I(a)(2) is that the surrounding properties “are so desirable that they cannot be diminished”. The statement has no basis in fact.

Count 7. The Board failed to properly consider the fifth prong of the variance criteria set forth in RSA 674:33, I(a)(2)(E).

The fifth prong of the variance criteria requires the Board to determine whether an unnecessary hardship results from literal enforcement of the Ordinance. RSA 674:33, I(b)(1) provides that

“[U]nnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area: (A) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (B) the proposed use is a reasonable one.

If these criteria are not established, an unnecessary hardship will be deemed to exist “if, and only if, owing to special conditions of the property that distinguish it from other

properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.”

With respect to prong of RSA 674:33, I(b)(1)(A), there is precisely a fair and substantial relationship between the purpose of the Ordinance provisions and the application of those provisions to the Property. Specifically, density regulations exist to prevent or mitigate the impacts that have been described extensively above. The Ordinance is consistent in its statement of purpose at Section 1.02. The concerns for overcrowding, traffic, unsafe or inconvenient access, safety concerns, and nuisances are intentionally mitigated by applying density regulations in the CBD district (among others).

Moreover, there is no uniqueness in the character of the Property. The Applicant has conceded that its problem of vacancy rates is one generally affecting commercial buildings. The issue is not unique to the Property. The Applicant also stipulated that there are similar properties that have sought to convert office space to apartments, it is indeed somewhat common in Manchester.

The Board’s reasoning as evidenced by its discussion went far outside the bounds of reasonableness and legality. The Board’s motion to approve the variance request found there is a hardship because “the city needs more units.” The Board is not authorize to issue a variance to alleviate a perceived hardship of the city. The hardship must be one of the Applicant that arises in the very specific nature set forth above and in RSA 674:33, I(a)(2)(E) and RSA 674:33, I (b).

The Applicant’s purported hardship is simply one of a market that has changed. That “hardship” affects all in the community. That circumstance cannot be the basis for granting a variance under RSA 674:33, especially one that violates so many of the Ordinance’s most basic zoning objectives. Unnecessary hardship, per RSA 674:33, must be related to the special conditions of the land itself.

Count 8. The Board relied upon factual representations and conclusions in the Application that are plainly false.

The project proposes a scant 28 parking spaces for 100 residential units and an entire first floor of commercial use. The neighborhood in which the Property is situated does not have sufficient overnight parking spaces located on public streets.

As a potential offset to this recognized and conceded issue, the Applicant stated that it had access to approximately 280 parking spaces off-site associated with the business located at

50 Dow Street. However, in the Planning Board meeting of November 3, 2022, the Applicant conceded that this number was grossly inaccurate, and that the more likely number is *85-90 parking spaces*. Furthermore, it is unclear whether the business located at 50 Dow Street (a large restaurant) has rights to these 85-90 parking spaces, which would diminish that number significantly, likely to the point of irrelevance. Even if the restaurant does have such a right and nonetheless supports the Applicant's proposed project, there still exists the potential issue of that business being later sold to a third-party – who may deny access to such parking.

Count 9. The Board failed to state conditions in the Decision that were stipulated by the Applicant.

The Board's Decision imposed no conditions of securing any of the referenced parking spaces to serve the project. The Decision ignores parking as a concern related to the variance the Board granted, which is error as a matter of law in evaluating the criteria of RSA 674:33, I. The Board improperly relied on an inaccurate, vague, and unclear representation of 280 off-site parking spaces being available to accommodate an increase in density. Furthermore, the Board also imposed no condition that the Applicant partially use the ground floor of the building for commercial purposes, as the Applicant proposed at the hearing.

Count 10. The Application failed to allege facts and circumstances that could warrant granting a variance under RSA 674:33, I.

With respect to the first two variance criteria set forth in RSA 674:33, I(a)(2)(A), (B), the Application alleges no facts other than advancing the positions that (i) a housing shortage exists in the City of Manchester and (ii) the variance would help to alleviate the problem. This is not a valid argument for either criteria. The purposes of the Ordinance stated in Section 1.02 do not contain any zoning objective of increasing the housing stock in the City of Manchester. Indeed the word "housing" is not contained in Section 1.02 of the Ordinance.

For the third variance criteria set forth in RSA 674:33, I(a)(2)(C), the Applicant once again rests upon the "housing" buzzword, claiming that 64 additional units somehow benefits the general public. But the Application does not pursue permissive housing for the general public. It professes to pursue housing in the form of an additional 64 residential units benefiting perhaps those residents. The ruse is transparent. The Applicant is property owner who would prefer to take advantage of a housing market crunch rather than be subject to provisions of the Ordinance and nothing more – despite the negative impacts to the community that arise from tripling the allowed density of housing.

In its discussion of the fourth variance criteria of RSA 674:33, I(a)(2)(D), the Applicant suggests that increasing housing use while eliminating commercial use will somehow result in additional workers and patrons. Yet in its Application, the Applicant states that its commercial

property is at a 40% vacancy rate – which indicates there is in fact no need for more workers or patrons to secure housing. If commercial property is vacant, pursuing this conversion from commercial to housing defies logic. One cannot conclude that providing more residences for workers and patrons to a location that does not demand their presence will somehow increase property values.

With respect to the fifth prong of the variance criteria of RSA 674:33, I (a)(2)(E): The Application makes no attempt to address this requisite finding under state law. Rather than to have attempted to demonstrate an “unnecessary hardship”, the Application simply references the need for housing once again, the master plan, and that the area is able support the increased density. These assertions, even if assumed to be true despite evidence to the contrary, do not constitute the very strict standard for an unnecessary hardship set forth in RSA 674:33, I(a)(2)(E) and RSA 674:33, I(b)(1). The need for housing is not a hardship on the Applicant. The Master Plan is not binding or definitive in any way as pertaining to a demonstration of hardship, and has no bearing upon individual hardship. The fact that a particular use can be supported (even though all evidence points to a contrary conclusion), is likewise not indicative of any sort of hardship. None of the reasons advanced in the Application could be construed as valid grounds for granting a variance.

If the Application does not assert valid grounds for a variance, and the Board does not independently articulate or discuss valid grounds for a variance, the variance cannot be granted.

Summary

For the reasons discussed above, the Appellant respectfully requests that the Board:

- (1) Grant this motion to rehear the Application;
- (2) Deny the variance requested by the Application for failure to demonstrate any means by which any of the criteria for variance set forth in RSA 674:33 I are satisfied;
- (3) Grant the proposed findings attached hereto as Exhibit E in support of the foregoing, and issue a written decision consistent with those findings.

Thank you.


Sincerely,

Suzanne Brunelle

Attorney for Amoskeag Terrace a/k/a Amoskeag Terrace Condominium Association



CITY OF MANCHESTER

PLANNING AND COMMUNITY DEVELOPMENT

Jeffrey D. Belanger, AICP
Director

Planning & Land Use Management
Building Regulations
Code Enforcement Division
Community Improvement Program
Zoning Board of Adjustment

Pamela H. Goucher, AICP
Deputy Director Planning & Zoning

Michael J. Landry, PE, Esq.
Deputy Director Building Regulations

VARIANCE NOTICE OF DECISION

Case No.: ZBA2022-138

Property Location: 1230 Elm Street

You are hereby notified that the request of: Air Tight, LLC (Owner)
c/o Brady Sullivan Properties, Arthur Sullivan
670 N. Commercial Street, Suite 303
Manchester, NH 03101

Brian Pratt
Fuss & O'Neill
50 Commercial Street
Manchester, NH 03101

to create 100 dwelling units in an existing building on a lot with 19,612 SF where 51,500 SF is required in the CBD zoning district from the terms of Section(s) 8.04 Minimum Buildable Lot Area of the Zoning Ordinance of the City of Manchester, New Hampshire, has been **GRANTED** as per documents submitted through September 16, 2022 in accordance with Article V of the Board's BY-LAWS on October 13, 2022.

Stipulations or Comments: _____

Required Action: *Site Plan Approval Required*
Conditional Use Permit Required

If denied, the decision is based on a finding that one or more the following five criteria was not satisfied:

- ☐ 1. The variance will not be contrary to the public interest.
- ☐ 2. The spirit of the ordinance is observed.
- ☐ 3. Substantial justice is done. .
- ☐ 4. The values of surrounding properties are not diminished.
- ☐ 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Explanation: _____

Robert G. Breault
Chairman, Zoning Board of Adjustment

Date: 10/20/22

NOTE: Permits or other approvals as may be required for vesting must be obtained within two years of the date of the public hearing, or the variance will expire.

Per RSA 677:2, any aggrieved person affected by the Board's decision may request a rehearing within 30 days.

1228 ELM ST

Location 1228 ELM ST

Mblu 0157//0005//

Owner AIR TIGHT LLC

Assessment \$8,463,000

Building Count 1

Current Value

Assessment	
Valuation Year	Total
2022	\$8,463,000

Owner of Record

Owner AIR TIGHT LLC

Co-Owner

Sale Price \$4,000

Certificate

Book & Page 5997/1151

Sale Date 09/21/1998

Instrument 04

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
AIR TIGHT LLC	\$4,000		5997/1151	04	09/21/1998
1230 ELM ST ASSOCIATES	\$0		0/0		11/29/1988
1230 ELM ST ASSOCIATES	\$0		0/0		10/20/1983
DAVISON REALTY	\$0		0/0		

Building Information

Building 1 : Section 1

Year Built: 1973

Living Area: 95,479

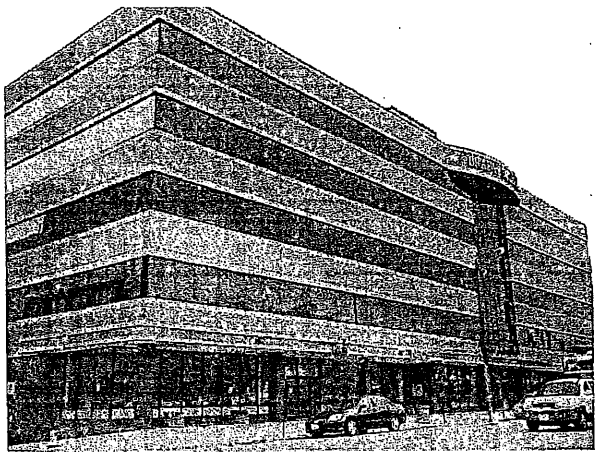
Replacement Cost

Less Depreciation: \$7,523,900

Building Attributes	
Field	Description
Style:	Office Bldg
Model	Commercial

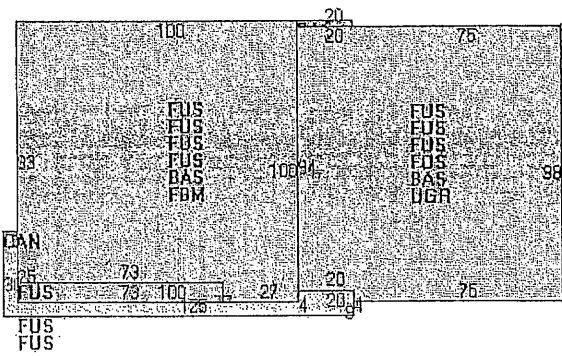
Grade	Good
Stories:	5
Occupancy	9,00
Exterior Wall 1	Glass/Thermo.
Exterior Wall 2	Reinforc Concr
Roof Structure	Flat
Roof Cover	Tar & Gravel
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Carpet
Interior Floor 2	Terrazzo Monol
Heating Fuel	Gas
Heating Type	Forced Air-Duc
AC Type	Central
Struct Class	
Bldg Use	OFFICE BLD
Total Rooms	
Total Bedrms	00
Total Baths	0
1st Floor Use:	3400
Heat/AC	CENTRAL
Frame Type	FIREPRF STEEL
Baths/Plumbing	AVERAGE
Celling/Wall	SUS-CEIL & WL
Rooms/Prtns	AVERAGE
Wall Height	12,00
% Comn Wall	

Building Photo



(<https://images.vgsi.com/photos/ManchesterNHPhotos/A00\05\73\40.JPG>)

Building Layout



(https://images.vgsi.com/photos/ManchesterNHPhotos/Sketches/4766_47)

Building Sub-Areas (sq ft)			
Code	Description	Gross Area	Living Area
FUS	Upper Story, Finished	76,760	76,760
BAS	First Floor	18,719	18,719
CAN	Canopy	830	0
FBM	Basement, Finished	9,449	0
UBM	Basement, Unfinished	40	0
UGR	Garage, Basement	9,230	0
		115,028	95,479

Extra Features

Extra Features		
Code	Description	Size
EL1	ELEVATOR-PASS.	6.00 STOPS
EL1	ELEVATOR-PASS.	6.00 STOPS

SPR1	SPRINKLERS-WET	115338.00 S.F.
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Land

Land Use		Land Line Valuation	
Use Code	3400	Size (Sqr Feet)	19600
Description	OFFICE BLD		

Outbuildings

Outbuildings		
Code	Description	Size
GS1	GARAGE PRK/SPC	28.00 UNITS

Valuation History

Assessment	
Valuation Year	Total
2021	\$8,463,000

Article 1. Title, Purpose and Authority

ARTICLE 1. TITLE, PURPOSE AND AUTHORITY

1.01 Title

This Ordinance shall be known and may be cited as the "Zoning Ordinance of the City of Manchester, New Hampshire" referred to herein as "this Ordinance".

1.02 Purpose

This Ordinance is designed and adopted for the following purposes:

- A. To protect and promote the public safety, convenience, comfort, aesthetics, prosperity, health, and general welfare of the inhabitants of the City of Manchester, New Hampshire;
- B. To secure safety from fires, panic, explosion, noxious fumes, and other such hazards and dangers, and to control nuisance-producing uses of land;
- C. To promote adequate light, air, privacy, and convenience of access to property;
- D. To avoid undue concentration of population, to prevent the overcrowding of land, and to lessen congestion in the streets;
- E. To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care, and other public requirements;
- F. To assure the proper use of natural resources, to prevent pollution of air and water, to protect property from flooding and accelerated erosion, to protect historic and archeological resources, to protect wetlands, and to conserve natural beauty and open space;
- G. To conserve property values by preventing the harmful encroachment of incompatible uses, and by providing for the elimination of those uses which adversely affect the neighborhood character, development, and value of property, and to insure that any proposed development is compatible in use, scale and building design within the neighborhood in which the development is proposed; and
- H. To encourage the most appropriate use of land, and to allow for planned, orderly, and beneficial growth as envisioned by the Master Plan.

1.03 Authority

This Ordinance is adopted pursuant to the authority conferred by New Hampshire Revised Statutes Annotated, Title LXIV, Planning and Zoning, as most recently amended. Authority for this Ordinance includes the power to adopt innovative land use controls pursuant to RSA 674:16, II, Grant of Power, including but not limited to the specific methods of innovative land use controls contained in RSA 674:21, Innovative Land Use Controls.

Yeas: Breault, Prieto, Ketterer, Powers, Guerra

Nays: None

Upon a unanimous vote, the variance was granted.

15. **ZBA2022-138**
1230 Elm Street, CBD Zoning District, Ward 3

Brian Pratt (Agent) proposes to create 110 dwelling units in an existing building on a lot with 19,612 SF where 56,500 SF is required and seeks a variance from section **8.04** Minimum Buildable Lot Area, of the Zoning Ordinance of the City of Manchester, New Hampshire, as per documents submitted through September 16, 2022.

Attorney John Cronin said he is with the Cronin, Bisson and Zalinsky Law Firm here in town. He said with him tonight is Arthur Sullivan, Principal of Brady Sullivan Properties and Brian Pratt from Fuss and O'Neill who has worked on submitting this zoning application and doing the drawings and designs with the building. He said also with them is Chris Lewis who would be up front if they had another seat here, but he is the architect for Brady Sullivan that works on these projects throughout the region and has been doing so for some time. He said the Board Members are all familiar with this building and he has referred to it as the old telephone building. He said those of you that were around in the 1980's probably remember it sitting vacant for possibly ten or twelve years with the yellow brick façade which wasn't too appealing or too attractive. He said Brady Sullivan purchased it approximately thirty years ago and poured a lot of money into it and did substantial renovations to see that façade that you look at today.

Attorney Cronin said back then the market for offices was quite a bit different than it is today and they had a successful run for a long period of time, putting tenants in and tenants out. Southern New Hampshire University [SNHU] was one of the most recent master tenants at that particular site and they were there for a number of years. They have recently relocated in consolidated over at their places in the Millyard. He said he is happy to see them stay in Manchester but he is not happy to see them leave the building, but it is a trend that continues not only here in Manchester and the State of New Hampshire, but he thinks throughout the country after Covid where people are seeing efficiencies from working from home and opportunities to consolidate overhead with respect to office buildings. He said as you know, Brady Sullivan has a number of properties in their portfolio, including some of the high rise office properties. Currently they are approaching about 40% vacant and he thinks that is probably the best evidence that the demand for office space in the City and locally is not what it used to be. It is very difficult to find credit worthy office tenants and fill up space.

Attorney Cronin said the Board has seen that trend in many of the other cases that they have done here throughout the downtown. He said we see the Red Oak building going up on South Elm and starting to grow and come to life which is an exciting project. Others, most recently, one on Hanover Street, they were here for a variance on density in the Odd Fellows Building, which he sees that they are getting started to do construction there. He said he can name a number of them, again the Lowell Street one where there is a need for housing. Our supply and demand balance is way off, where we have much more demand than we have supply and at every corner and every location and every paper you pick up, you see a cry for housing.

Attorney Cronin said Brady Sullivan is trying to answer that call with a number of their properties. They have done a number of conversions of office to apartments in the inner city attracting credit worthy tenants and tenants that contribute to the community. They fill important jobs in the high tech industries in the Millyard and some of the businesses that we hope to keep and maintain here in the City. With this particular property, they don't want to repeat performance of the 1980's with the building that is empty or near empty and they have looked at it for highest and best use. They determined that that would be multi-family. He said just to clarify in some of the notice in some of the papers there was some reference to affordable and he thinks Arthur Sullivan and Shane Brady refer to all of their apartments as affordable when compared to going out and maybe purchasing a home at current prices. He said using that term in the New Hampshire Housing Finance where affordable has a significant relationship to Market Income [MMI], these are not subsidized, these are not work force and these are not affordable for the New Hampshire Housing standard. These would be market rent apartments.

Attorney Cronin said also in the application, it calls out for a density of 110 units and it calls out for adapting and doing an adaptive re-use of the entire structure for apartments. Since that application was filed, or at or near the time it was filed, they had an occasion to meet with the Planning Staff and it won't be a surprise to any of the Board Members that they had concerns of adapting the whole building to residential. When you look at the table of uses in the Zoning Ordinance, a building like this in the Central Business District [CBD] can be used in its entirety for multi-family with the benefit of a Conditional Use Permit from the Planning Board. Also, as a matter of right, without any Conditional Use Permit, you can have multi-family housing on all of the upper floors. When they looked around town and they had some robust discussions in the Planning meeting about what they view as the potential commercial use, granted, we have a number of restaurants downtown. There is a significant number that they don't have such as the Gap and he doesn't think they are coming anytime soon and with the state of our malls and our retail industry with Amazon, if they could get the Gap or some of those big name retailers, it would be a different story. What you might be looking at is a small privately owned person trying to have a little shop there, but not conducive to the market type apartments that are being proposed here. Never the less, Mr. Sullivan and Mr. Brady went to the drawing board after that meeting and said, let's reduce our ask and remove some of those apartments from the first floor and take some of that floor entry area and one of the suggestions was to have a pet wash, which he has heard that they are popular. He said he doesn't know the mechanics of how they would work, but he is sure that people that have pets that reside in these units may welcome that type of use. Another suggestion was a small convenience type hardware store which might be a good thing for downtown.

Attorney Cronin said on that first floor, what they have done is taken the core, dedicate some of that to commercial and they don't know who it will be. He said in the rear area where the elevation changes, if you go down Hollis Street or Kidder Street, the side streets there, the road goes down towards Canal Street. He said those back units really have a different set of elevation so those will remain. He said the ask for tonight is the density variance of up to 100 units and they will cut it down. They are receptive to a condition that would provide that they be on the first floor, up to 7,000 SF of commercial or retail space. That is not desired, but Brady Sullivan has always answered the calls for community service here with every race and every event and they want to be good neighbors and they want to be good citizens. They have been here for a long time. It is not one project and they are in and out. They responded to that request and are willing to make that accommodation even though they don't believe that it is

the highest and best use.

Attorney Cronin said he wanted to turn it over for a moment to Brian Pratt. He said all the Board Members are familiar with the building and the mechanics, but he can give some of the site's specific details that the Board might consider in their decision.

Brian Pratt of Fuss and O'Neill said he handed out a packet to the Board that has a couple of plans that are slightly different from what was submitted. He said the first one is just an aerial photo and he highlighted in red, the building as Attorney Cronin mentioned, it is 1230 Elm Street. He said it is bounded on the front by Elm Street and then Hollis Street and Kidder Street. In the back is a public alley that fronts on the back. There is an existing loading space that the commercial building used that they will continue to use for deliveries and move ins and those types of uses. He said if you flop to the next page, you can see that this is the site plan and they are actually not proposing any physical changes to the site. As it exists, the building sits right on the property lines on all four sides. There are no physical changes proposed to the site, the sidewalks or anything like that. As he mentioned, there is the loading space which will remain. The main entrance will remain on the front and the only real changes that will occur, will be associated with any of the retail space.

Mr. Pratt said if the Board flipped to the next page, this shows the lower level and as it exists today, there is a parking garage under there so they kind of striped out and they can probably fit about 25 parking spaces down there and some of them may be double stacked. He said he knows parking is a concern and associated with that, Brady Sullivan owns a parking lot just down Hollis Street and it is the parking lot with 900 Degrees, so there will be parking allocated for residents of this facility in that parking lot.

Mr. Pratt said on the next page, it is A0-2, that is the first floor plan and this is what slightly differs from what was originally submitted. As Attorney Cronin mentioned, they had a meeting with the Planning Staff and one of the concerns raised was they wanted to add some commercial space on the first floor. This is the plan that was submitted to the Planning Board and they are tentatively on their agenda for November 3rd. This plan showed two units being removed and replaced with some commercial space. What Attorney Cronin was mentioning is that they are still kind of working through that with staff and the Board and Brady Sullivan would be willing to do more commercial on that front. He said there are four more units that front on Elm Street and they would be willing to convert some or all of that frontage space to commercial. It would drop another few units, so the ask that they originally submitted was for 110 residential units, but with some of these changes, they are willing to drop that to 100, because they are going to be right around the 100 range when they reconfigure some of these units.

Mr. Pratt said on the last page is just the typical floor for the second through the fifth floors and there are about 20 units per floor. The ask, as he mentioned, is density and based on the City's calculation, they would be allowed 36 residential units here and that is based on lot size specifically. There have been a number of applications that have requested density increases on various apartments for reuse, tear downs and new buildings and the Master Plan specifically sites density increases as a proposed zoning amendment coming up. He said he understands that the City is currently working through a new Zoning Ordinance and he believes one of the main features of that will be increased density. He said this is in line with what has been granted on about a dozen projects in the last couple of years, in downtown. It is

in line with the Master Plan that seeks to bring more residential to the downtown core and it is in line with those zoning amendments.

Attorney Cronin said as far as the layout and design, this is a tried and tested layout that Chris Lewis has used in other facilities here in Manchester and in a larger facility in Nashua and they have been well received by the market. People like them and there is no vacancy and people want more of them. He said they are pretty pleased with the way the layout and the design has been.

Attorney Cronin said neighboring Amoskeag Terrace is one of our beautiful communities here in town and we probably all know them as they sit on that slope going to Canal Street. He said he thinks you can't help but notice them as you drive by. Attorney Cronin said Mr. David Cuzzi, who is the President of Amoskeag Terrace, approached them just moments before the meeting and said that he had written a letter raising some concerns, though very polite and legitimate, they are questions that anyone living there would have. He said after tonight they could get together with them before Planning and there would be another opportunity to meet with him and his group to see what their concerns were, but his understanding is, one of the big ones was parking. He said he thinks their residents currently benefit from on street parking through the Pass Program. There are 280 units that are dedicated either through ownership or lease to this site. That is pretty substantial for downtown apartments when you think about it. He said he thinks that should not be an issue based on the number of spaces.

Attorney Cronin said another concern was, and again, he just had a brief conversation, was related to pedestrian and some vehicular traffic. When you look at apartments and offices generally, and he has looked at far too many traffic studies for both and adaptive reuse generally with office buildings, when they are fully occupied the traffic concentration is peak hour and isolated hours in the morning and in the afternoon. He said you get the total volume of traffic coming generally between 7:00 am and 9:00 am and leaving probably between 4:00 pm and 6:00 pm. With residential, that is distributed throughout the day and there is generally far less impacts. Certainly, downtown Manchester is a self-correcting type operation and we have all been there when there has been traffic and other times not. He said you can go down Elm Street and get to Canal Street. You can go up to Chestnut Street and there are a lot of different ways to move around and he thinks Steve Pernaw says it best, if you are going to the Dunkin Donuts on Webster Street, if the traffic line is out into the middle of the street, you will probably go to the next one. People are pretty smart and seem to manage the traffic.

Attorney Cronin said the last piece of it, he thinks was trash, another legitimate concern. This particular project proposes an inside storage facility. There would be a room dedicated to storage and trash and there will be roll up dumpsters that are there for the residents to dispose of their trash. They will be rolled out through to back to the loading area and private haulers will pick that up. A waste company would come and remove the waste so there wouldn't be a hundred toters lined up on either Hollis Street or Kidder Street and he is sure that that is something that the Planning Board would not allow them if they are fortunate enough to get to that point.

Attorney Cronin said he would be happy to briefly address the five criteria which are incorporated by reference in the application, but looking at the spirit and intent of the Ordinance and the public interest, the test has been for a long period of time whether or not

the grant of the variance would alter in a meaningful or substantial way the essential character of the neighborhood. He said he thinks that when you look at the neighborhood, it is not just the abutters, it is probably the entire downtown area. They know that that is a community in transition where moving away from office to mixed use and to try to bring people and residents downtown and have an urban work, live and play environment, they see some of their best and brightest property owners and developers, they are building this type of housing for a reason. He thinks the City supports it and they want housing and they want people to come to the downtown and most importantly, they want people to come and fill the vacant jobs at our hospitals, at the Millyards and our other professional places who are just crying out for employees. What we hear often is a shortage of new quality housing for them to live in.

Attorney Cronin said with respect to the substantial justice that is a balancing test as you know. What would the harm to the applicant be versus if it is not granted versus the harm to the public if it is granted? He said you can have this type of use in this building and for argument sake, he doesn't think anyone would do it, but you could have 37 four-bedrooms on the upper floors. He said they would probably have a lot more significant negative impact to that area due to its density because there is no regulation controlling the number of bedrooms. Here you are getting units and a lot of times you will get a two-bedroom that is shared. Sometime you get a two-bedroom where one person occupies it and they have one bedroom dedicated to an office and they are working from home. You see that even though it is a larger number of units, it doesn't necessarily mean more people as if what an allowed use would provide.

Attorney Cronin said as far as having this as another vacant office space downtown which is probably not good for the community and is certainly not good for Brady Sullivan, and not good to be trying to fill space with non-credit tenants which sometimes can be even worse for the community and worse for the property owners.

Attorney Cronin said looking at the value prong, they submitted a letter from Calley Milne of Kanteres Real Estate. He said she looked at the plan and she is familiar with the neighborhood and she went out and looked at it and she wrote a letter documenting her findings based on her education and training and experience. She concluded that if the variances were granted, it would not diminish the value of surrounding properties. He said he would waive the reading of that entire one in the interest of time.

Attorney Cronin said with respect to the hardship argument, is there a fair and substantial relationship between the terms of the Ordinance and the application to this property? He thinks the history here and the number of times he personally, and he is sure there are plenty of other people that have been in and got density variances of the same caliber. The buildings that are currently being rebuilt or refurbished shows that the density under the old regime prior to this change in our downtown in living versus office, is not really related to what is going on in the community in the downtown area.

Attorney Cronin said the next question they have to satisfy is the reasonableness test. He said he thinks it is clear from other projects that are going forward that using this particular building for residential is a reasonable use. He said they believe that they meet the criteria and they are happy to entertain any questions that the Board may have.

Chairman Breault turned the hearing over to the Board.

Anne Ketterer said this might be a question for their architect. She asked what the ceiling height of the units was. Mr. Lewis said in the restrooms and the bathrooms are 8' and out in the main space the ceilings will 9' to 10'. Ms. Ketterer said that high? Mr. Lewis said yes. Someone in the audience said they couldn't hear the answer. Ms. Ketterer said it was 9' to 10' and asked which one is it because there is a big difference. Mr. Lewis said there is and they are still developing the final plans. Ms. Ketterer said then we will go with 9' which is still pretty tall. There was still some confusion from the audience and Ms. Ketterer explained that the question was what the ceiling height was. She said that is not the floor to floor height, that is the height from the finished floor to the finished ceiling and the answer was 9', possibly 10' in some areas. Mr. Pratt said he thinks Mr. Lewis said 8' in the in the bathroom areas.

Greg Powers said it sounds like the applicant has taken into consideration and maybe have been able to address to some degree some of the concerns of the residents of Amoskeag Terrace, which were parking and the dumpsters. He said they also expressed concern about pets and pet waste. He asked if there were going to be pets allowed in these properties. Mr. Lewis said yes. He said Brady Sullivan allows pets in their properties.

Chairman Breault turned the hearing over to the public and invited those in favor of this application to come forward.

Nathan Zuillich of 90 Lowell Street, unit 1C said he is right in the neighborhood so this will directly impact him. He said he is local and he drives a truck and delivers basic things like toiletries, laundry detergent and things that people in the community use. He said he is part of the working class. He said your City motto is Labor Vincit, Work Conquers. Lately, for working class people like him, their labor is not conquering the rent. He said there is a critical supply shortage and he is going to speak on the public interest real quick. He said vacancy rates are sub 1% and that is not a normal market and it is making rents skyrocket. It is pushing middle class people like him out of the City. He said he has several friends who left for places like Florida, Ohio and he is thinking about leaving too, because his rent is now \$1,300.00 and it was \$1,000.00 a few years ago and working people like him just can't afford to live here.

Mr. Zuillich said he didn't know where they are going to get people to serve you, but 110 units is a drop in the ocean. He said we need 5,000 to 20,000 units in Manchester and maybe 110,000 statewide. That is from a five letter federal agency and he forgets which one. It is a drop in the ocean but the ocean is made up of drops. Any additional supply to the housing market when we have such a critical crisis, anything helps. He said he knows there are concerns about the pet waste or increased traffic and he is sure that a lot of the people here got into their single-family houses back when housing was affordable on a working class wage. All he asks and all working class people as of them is, congratulations, you made it. Just please don't pull up the ladder of economic opportunity after you. Just allow the market to adjust and meet demand.

Jane Haigh said she lives at 1573 Union Street and is with the Manchester Housing Alliance, which is an activist organization trying to promote affordable housing. She said they are in support of this and she is glad we clarified what is affordable and what isn't affordable and she is sure that they will do well with 110 units. She said she remembers when she attended

the Code-A-Palooza and in fact, they are looking at rewriting the code and she has not heard any progress report on how that is going or when there is going to be a public hearing on that. She said she imagines that they will change it to accommodate this without having to get a variance. She would like to hear what the rents might be and she said she doesn't think we heard how many two bedroom units and how many one-bedroom units there will be out of these 100 units. She would like to know that.

Ms. Haigh said she said would just like to reiterate that she is concerned about affordable housing and she doesn't think we should pretend that this is going to make a dent in the problem of people getting evicted in town who now really can't find a place to live. She said she thinks this will serve as everyone has said, the higher paid tech workers in the Millyard and BAE and Omni and we definitely have a need to grow the economy and add more workers. We also have a need to have housing for as Mr. Zuillich said, people who are ordinary working people who are trying to get by at 80% of the standard of average median income. She said they can't demand and ask and she doesn't even think that as a Zoning Board in exchange for a variance, you can demand a certain number of affordable units, but it would be nice if Brady Sullivan would commit to some percentage over the whole 600 units that they have in town. It would also be nice if Brady Sullivan would accept section 8 vouchers. She is really hopeful but because housing is such a huge problem, not just in New Hampshire, but all over the country, that maybe there will be more subsidized rent support and that would be really good if they were positioned to take advantage of that.

Chairman Breault invited those in opposition to this application to come forward.

David Cuzzi said he is the President of the Amoskeag Terrace Unit Owners Association and he owns 94 Hollis Street. Mr. Cuzzi said they are opposed to granting this variance and he is speaking on behalf of, of course the Board of Directors and the owners. Amoskeag Terrace is opposed to granting this variance and they are opposed in two areas regarding the criteria. He said they think it is actually contrary to the public interest and they think that it would diminish the values of the properties, specifically, the forty units in Amoskeag Terrace and more specifically, the eight homes that are a mere 20' from the rear of this building. He said Attorney Cronin noted that they had a chat and they think that this matter should be tabled because they have not had until this evening, any interaction with Brady Sullivan. He said they think it would be great for them to have a meeting to further discuss the concerns that he outlined in the letter that he sent in for the record. He said he wouldn't go into great detail as that letter does, but did want to hit the highlights if you will.

Mr. Cuzzi said they feel that this density is inappropriate for this space. He said he doesn't mean this to be trite, but they feel that when you compare this project to the other projects that have been mentioned here this evening downtown and office space conversions and whatnot, the project before the Board, the request before the Board is the proverbial square peg. He said with respect to the prior uses, it was mentioned that there were say 300 people using that as an office space. He would respectfully suggest that 300 people in an office building is different than over 200 people or so that would live in this building. There is only, he believes the plan said, about twenty or so parking spots for 110 mostly two-person units. He said that everyone will have cars, this is Manchester and not Manhattan, so that is over two hundred cars. When there were 300 people working in that building, there were still only two dozen or so parking spaces so there was just not the traffic. Most of the time when they had that level of folks, it was folks who were employed by SNHU and they bussed and

shuttled them in from parking lots from all over the area. There wasn't an impact and he would say before he goes further, he would like to say that Mr. Sullivan and that building, they have been great neighbors for decades. They have enjoyed a great relationship and have never had any problems when there have been issues with changing of weight and changes of trash toters and things like that. They have been able to accommodate them, so he wants to make sure that none of this is personal. He said he hopes everyone knows that, but they do think that they have some very legitimate concerns that he hopes would give the Board pause in granting this.

Mr. Cuzzi said the other projects that were discussed, 1,000 Elm Street or even 875 Elm Street which he doesn't believe was Mr. Sullivan's company proposal, but let's just talk about those a little bit and how they are comparing. He said 1,000 Elm is a twenty story building. The building at 1230 Elm Street is a five story building. They are looking to put, according to media reports, 147 units in what is a twenty story building with two massive parking decks behind it and green space in front. This building which is a quarter of the size, they are only looking to put in about 37 less apartments. He said he believes the average square footage of the units in 1,000 Elm will be over 1,000 SF. That certainly will not be the case with what we are talking about here. The point is, that property can accommodate this. There are no residents around there, so no one is impacted. This is the only project that he is aware of, and he is speaking generally so bear with him, this is the only project like this either with the tear downs and the rebuilds that you are seeing. Manchester Place which is right next to them, with the massive parking garage that they have had no issues with, they are looking to put or do a conversion in a residential neighborhood. He said we are a residential neighborhood. He said he knows they are in the downtown, but still, none the less, there are forty homes with about eighty or so people that live there. He said he thinks that that is an important distinction. He believes in 875 Elm Street, again, they have a parking deck right behind it and green space and those units are over 1,000 SF as well.

Mr. Cuzzi said parking is their main concern but not their only concern. If they are talking 200 cars and only 25 on-site parking spots and he knows that they own the 280 or so parking spots a block away, that is not on-site. That is a block away. Everyone is going to be looking on Kidder Street and Hollis Street. If you include the spots that front this property on Elm Street, he doesn't have an exact number, but there can't be more than 30 parking spots. Those people, maybe they can be told that that is where they are parking but they're not going to park there. They are going to look to park close to their house on a night like tonight when it is cold out, when it is hot out and basically, in New Hampshire, it is either hot or it is cold. They just think in reality, they will now be competing with 200 cars for 30 spots. That will impact their property value, period.

Mr. Cuzzi said the other issue too he thinks, is the safety. He said that alley, which is not a street, is narrow and right now, where are all the delivery trucks and Amazon trucks going to park. Where are all these people who need to unload their groceries before they park in the lot across the way, which by the way, is below grade, so if folks are familiar, to get up from the 900 Degrees parking lot, you have to go up two flights of very steep stairs and then walk behind the Massachusetts College of Pharmacy campus and then across Hollis Street and then into the back of this property. Again, nobody is going to want to do that and most of the residents will have to, of course. They are going to be unloading their groceries in that alley and they will be double parking on Kidder Street, double parking on Hollis Street and double parking on Elm Street. All the door dash delivery trucks and as he mentioned previously, all

the parcel deliveries will be double parking. He said he thinks that is a hazard.

Mr. Cuzzi said he didn't know if Members of the Board have visited the site and if they haven't, he hopes they will. He said pedestrians are already taking their lives in their hands when they are simply walking down from Elm Street on Hollis Street or Kidder Street because the building already blocks your ability to see any cars exiting Hampshire Lane and turning onto Kidder Street or Hollis Street. This will only increase. That is a pedestrian super highway, if you will, with people coming from the Manchester Place apartments and going over to the gyms, going to 900 Degrees or Massachusetts College of Pharmacy students cutting behind and going up to Elm Street and folks at the various other entities, especially Amoskeag Health coming up. It is very, very busy and they are concerned not only how it is right now, but if you are putting double parked vehicles with people unloading their groceries or whatever it may be, on all these different sides, it is going to create a very unsafe situation for everyone, not just them.

Mr. Cuzzi said the trash was addressed and he thinks that is good to know, although, they do get a little nervous when we hear about roll out dumpsters. Who is doing the rolling out and is that going to end up being left there. He doesn't mean to say that Mr. Sullivan and his employees would be disrespectful to the rules, but it is a concern, because if you roll out a dumpster into that alley and someone forgets to put it back, what happens in bad weather, so on and so forth. Now that alley is almost closed off or is very much impacted in terms of how much room people will have to get around. There will be concern about trash, rodents and that kind of thing.

Mr. Cuzzi said we mentioned pets and that is another concern, which is a legitimate concern. It seems like everyone has a dog now, especially if you are under the age of 35 or so. He said there is not a blade of grass and there cannot be a blade of grass on that property. The only place these folks are going to go to get relief for their pets is their property. He said they do have gates and they were chatting a little bit about the gates. They don't want locks on their gates. They have been in the middle of a city before it was a city. They have been around for 110 years. They don't want to be walled off from the downtown, they are part of downtown. They are proud of it but they also are proud of the way they maintain their grounds. They are concerned that maybe it is not the dog waste that they need to pick up, necessarily, but frankly, it is urine and that burns your lawn. If we are talking about 50 dogs, they could be just going if they are walking down the sidewalk because of course there is grass that is along the sidewalk. He said you can't do anything about that. Their lawn in the courtyard could be at risk and that also will impact their property values.

Mr. Cuzzi said Mr. Chairman and Members of the Board, again, they respectfully request that this be delayed for the reasons they stated. They are opposed and they would like to continue dialogue with Mr. Sullivan and Attorney Cronin. He said he would note, as you can see, many of the owners are here tonight. He said he believes that everyone is just looking to come up and introduce themselves for the record and simply say that they associate themselves with these comments and the comments that are in the record. He said in the interest of time, rather than have twenty or so people come up, state their name and say that they agree, is that the only real way to do that so that people are on the record, or is it appropriate for folks just to sign in. Chairman Breault said at a minimum they should sign in, but they can simply say "my name is so and so and I agree with what Mr. Cuzzi said" and then sign the tablet. He said that makes them officially part of the record. Mr. Cuzzi said with

that, he concludes his remarks and he appreciates the Board listening and their consideration of their concerns.

Kitty Peterson said she lives at 68 Hollis Street and has lived there since 1991 and she has owned the unit since 1991. She said agrees with Mr. Cuzzi's comments and she does think that the matter should be tabled at least at a minimum this evening. She would like some more clarification as to the parking and the ownership and the access to that parking. She said she also wonders how these units might be affordable. It doesn't seem to her that they would be, but she is willing to listen to more clarification.

Dan Marshall of 47 Kidder Street said they are abutters. He said they have been there for fifteen years and there has never been an issue. Everything has been fine since they have been there. His concern is that as was pointed out, the footprint of that particular office space will support 36 units and they are putting 100 or 110 in there which is almost triple the amount of units for the space that is there. It just seems like they are trying to put 20 pounds into a 5 pound bag in terms of this. He said he supports what Mr. Cuzzi has said.

Susan Marshall of 47 Kidder Street said she is also opposed to this. She said they live in a historic neighborhood and it has been beautiful so far and all the things that Mr. Cuzzi mentioned are going to definitely impact them, especially the people in the top row, but actually everybody.

Gene Engholm of 45 Kidder Street said he agrees that he opposes this. He said he would challenge each of the Board Members to go look at the alley if they haven't, that abuts his property. Right now they have garbage out there to put their waste, but if you bring the garbage cans out or roll them out, backing up is going to be a challenge for him to even get out of his yard and right now, he can tell you that the flow through, the cut through there is dangerous around that corner. He said he has almost been hit. It is too narrow and he guesses he would question if there is a new precedent, usually you start off by saying "we've had this other property that has had 110 units in this square footage". He said he knows they have talked about expanding the footprint, but three times the size, he doesn't think it is going to be approved for that moving forward for the City to that type of dwelling, so he thinks it is just too small, the space, the dogs, the parking, the garage and the garbage doesn't really seem to be the right fit. He said he understands about the loss of income from not having businesses in there, it is a tough environment but he doesn't think it is the right setting. No one wants anyone in the backyard so he doesn't think it is the right fit if you truly look at the dynamics. He said take a look at that alley and drive down there and he thinks the Board will agree.

Matthew Pilotte said he is a unit owner and lives at 96 Hollis Street. He said he is also a Member of the Board of Amoskeag Terrace Association and he is here to voice his opposition to this application. He said one of the things is clearly there was a lot of time that was put into the project application and with all due respect to the applicant, he was really disappointed to see that there was not a lot of information included in that application for the support of the reasons why the application should be approved. A lot of it just kind of felt like trust us, everything is going to be fine. He said he echoes Mr. Cuzzi's comments from before and hopefully we can have a dialogue and work out maybe some of the concerns that we have about the current state of the application.

Tanya Bollenback said she lives at 97 Kidder Street is an owner at Amoskeag Terrace. She

said she just wanted to agree with what Mr. Cuzzi and Mr. Pilotte have said.

Bill Blanchette said he lives at 64 Hollis Street, Amoskeag Place. He said he and his wife have lived there since 1976. He said it has been a wonderful neighborhood and it has been in the truest sense of the word, a neighborhood. He said they are concerned with all of the issues that Mr. Cuzzi mentioned in his presentation. He is especially concerned with the parking. They are a two car family and they use the on street parking continuously, so that is very important to them. They have spent a fortune as an association, maintaining the grounds of their property and being the only green space within walking distance of this building, they are primed to be the neighborhood poop block for this building. They prohibit their own owners from using those courtyards for dog walking and dog relief and in order to deal with conceivably another two hundred people that may have dogs, they will probably have to hire a poop control officer just to maintain the property. He said his other concern is again, getting back to the parking, the fact that the Pearl Street parking lot is apparently going away, there is another area of parking that is being taken away which will make the parking even more difficult. He said they hope things can stay the same. He thinks Brady Sullivan is doing a wonderful job for the City and they have no personal vendetta against them, but he really thinks it is overkill in this part of town. It also occurred to him from his limited knowledge of all of Brady Sullivan's properties, that this will be the only one that really is in a residential area.

Drew Parsons said he lives at 65 Kidder Street and he is here to agree with the sentiments and comments that have been made and he opposes this as well.

Bill Driscoll of 49 Kidder Street said he is the Treasurer of Amoskeag Terrace and in addition to concurring with what Mr. Cuzzi's objections were, he lives in that top row directly across from the building and he envisions a really, really tough year of construction. When they refit the building to SNHU several years ago, there were lots of construction vehicles parked in that alley and many days they couldn't even get out of their own parking places without asking people to move trucks. He said he thinks it is a big job and will probably take a year according to what the paper said, so that is very unappealing and he just wants to second the whole safety issue, especially in the winter. He said cars come around the corner into that Hampshire Lane which is the back alley and it is only 20' wide when you come in there. It is always icy and there are always people walking through there and it feels like an accident waiting to happen.

Carolyn Grean said she also lives at 49 Kidder Street on the back alley behind the proposed building and she wants to say she totally agrees with all the anti-things that Mr. Cuzzi put in his letter, all the concerns.

Barbara Plamondon said she is at 50 Hollis Street which is a direct abutter from the building across the way, right across from the garage doors. She said she agrees with everything that Mr. Cuzzi presented tonight. She is also concerned with the safety and concerned of the parking. She said North Hampshire Lane is a street that is not no parking and that doesn't stop anything so clearly that is an issue that she is concerned about. She is also concerned about water and sewer and how their system in the City is going to handle the extra residents. She is opposed and she supports Mr. Cuzzi and everyone else from their group.

Bob Plamondon said he is at 50 Hollis Street and he is an abutter who lives right across from the parking garage and he doesn't believe that it is 20', he thinks it is less. He said he is not sure how they could even roll out a garbage can without hitting their cars. He said he also agrees with everything Mr. Cuzzi said.

Jennifer Marrero of 48 Hollis Street said she just wanted to say that she agrees with everything that Mr. Cuzzi and the rest of Amoskeag Terrace have said so far.

Ethan Way of 48 Hollis Street said he just wants to express his agreement with everything Mr. Cuzzi said. He said he shares most of the same concerns with parking congestion and how it will affect their property values.

Chairman Breault invited those with general comments to come forward.

Brittany Ping said she lives at 408 Rimmon Street and she is here for another case as an agent and she has never done one of these things, but she actually manages two close-by properties that are very similar. She said she is the Manager at 1358 Elm Street and also for 1279 Elm Street which is just across the street and they have the Church Street lot that they rent back to their tenants and they know that Pearl Street lot is being taken away and turned into housing. She said 1358 Elm Street is a multi-use and the first floor is commercial. They have up to four stories and 20 residential units and at 1279 Elm Street, that is 22 residential units with again, some commercial on the first floor there. She said she is hearing things and there are some concerns and it is hard in property management and real estate when you have to say, oh, they are going to have pets. She said that is a lot of emotional service animal and service animals and they have to be accepted. She said you can't stop that, so even if you were to have a no pet policy, she wants to say that about 20% to 25% of her renters, which is about 325 units, do have emotional support or service animals that they are required under HUD and Americans With Disabilities Act to accommodate those into our households.

Ms. Ping said she did want to echo that there is absolutely a dog feces problem and she actually has a non-profit that they put pet stations on the west side and that is definitely an Elm Street problem. She said they have a Great Dane that lives in one of their units at Elm Street and Dow Street. People want to live in the City with their pets and that comes with big pet problems and property management can mitigate some of those concerns if you are friendly with your neighbors. She said Brady Sullivan has an excellent reputation of that management. One of the ideas, she knows they talked about a pet washing station, she lives right next to the Lofts at Millwest and they have a wonderful doggie turf area that is highly utilized by their residents. She sees them every morning when she crosses the bridge. Obviously, the density that she manages, these are not brand new buildings by any stretch of the imagination, but they are more similar in regards to what the zoning code looks like now. These are all concerns that you have at that density and just some general comments on what property managers do to mitigate those kinds of concerns and what they are also held to in regards to their legal responsibility.

Adam Vanlandingham of 241 Cartier Street said he was going to speak directly to the Board. He said he lives on the west side and he has nothing to do with Brady Sullivan or any of the things that they want to build and he has no opinion about the homeowners that are affected. Currently, right now, they are 5,000 units short in Manchester that he is sure that all of the Board Members are aware of that. There is a critical point of 3,500 short which means

right now there are 3,500 people that are at risk of dying from exposure in Manchester. If the Board takes in effect everything that is happening right now with the country and locally, you can walk directly into Market Basket today and you can see that they are spreading the products out along the shelves to make it seem like the shelves are full. That is not a joke. It is a very serious thing that is happening, to where they are spreading the bread out so it looks like the shelves are full.

Mr. Vanlandingham said as far as the nation, the whole country is concerned, we lost the petro-dollar so the dollar is at extreme risk of extreme hyperinflation over the next two to three years and that is going to affect us locally because you guys are already at a housing shortage. You are already at a 3,500 short on critical housing and you guys are the ones that are responsible for making the decisions for what is going to happen in two to three years.

Mr. Vanlandingham said all housing should be approved to be built. He said this is all brand new to him and this is the first time he is here and the first time he is hearing any arguments. What he heard tonight is people trying to build apartments on top of garages and people trying to build multi-story apartment units. All of those need to be built and all of those need to be approved because you are already exposing 3,500 families to exposure and in two to three years when Market Basket can no longer hide that there is no food on the shelves, you are going to be in an emergency housing situation and none of this is going to matter.

Mr. Vanlandingham said the biggest complaint that he is hearing is parking and dog feces and property values? None of that is going to matter. You guys are the leaders of this community and you are supposed to see the writing on the walls, you are supposed to be making plans for the future. You need to pull your head out of your butt and pay attention to what is going on, because this is way bigger than anything that he has heard. Whether they want to build luxury apartments or whether they are worried about the dog feces is much bigger than that and you guys are responsible for that. He said he is just a service technician but that is just from what he has heard tonight and he would like the Board to really take that into consideration and make decisions now that are going to prevent people from dying from exposure in two to three years, because you are already at that risk.

Nathan Zuillich said he spoke earlier but he just has a question. What is a market rate for a two-bedroom apartment? Chairman Breault said the applicant would have a chance to answer questions after everybody has spoken. Mr. Zuillich said he has heard affordability is a concern. He said there is an additional housing supply when we have a critical shortage and there are little tent camps outside his apartment building. Any additional supply helps the market overall because there is a shortage. It is just economics 101. If they were to commit to making a certain percentage of that affordable, that would be great, but at the end of the day, any supply that gets added helps.

Mr. Zuillich said overhearing some of these people talk, they say the average price of these houses they live in is \$400,000.00, so 20% down and you are looking at about \$3,000.00 a month at least after mortgage payment, property taxes and they are clearly privileged people. He said working people like him can't afford that. He said they got in and they can afford it, that's great. He is just asking the Board to please keep in mind the community need. There are hundreds of people on the street and 40% of the working class is rent burdened. He gets it. It sucks when you step in dog poop, but there are literal needles on the ground. This is a real problem.

Mr. Zuillich said what the gentleman over there said about supply shortages, he is a trucker and he works in logistics and it is not that bad but it is very hard to find truckers around here because the wages don't pay the rent. He said it is not quite that bad, sometimes they run out of medicine and for now they can move things around. We are not there yet. Property values, he just wants to say he wouldn't go as far as the previous speaker did, but during the Covid stimulus to help combat the effects of the mass unemployment during the pandemic, they did double the M1 money supply. There is twice as many dollars in existence now as there were before so property values are in a sense artificially inflated. He said any supply helps and we might not like Brady Sullivan and we might not like their corporate ethos, but they are adding 100 units where we need thousands and nobody else is doing that. You are part of the solution, let's not make the perfect the enemy of the good. People like him are struggling to pay rent, people are suffering and sometimes they are dying. It is a crisis and you guys have the power to change that.

Michael Landry said he had a letter in opposition from Mr. Cuzzi and we heard from him. Mr. Cronin referenced his letter and he wasn't able to send it to the Board because it came in late. He said he had an email from Aurore and Scott Eaton and he read it into record.

Dear Chairman Breault and members of the Zoning Board of Adjustment,

We are unit owners of Amoskeag Terrace and wish to communicate to you that we are in support of the letter sent to you earlier today by our condo association's Board of Directors President, David J. Cuzzi. Though we support increasing the availability of residential units in our neighborhood, we feel that this particular project is a bad idea, as it will have an adverse impact on our association's property value, on our general quality of life, and on public safety-for the reasons stated in the letter. We ask that you deny this request for a variance.

Thank you for your consideration,

***Aurore & Scott Eaton
118 Hollis Street
Manchester, NH 03101***

Chairman Breault invited the Attorney Cronin to address all these comments.

Attorney Cronin said he just wanted to address one factual issue that may be driving some of the concerns. He said he heard comparisons to 1,000 Elm Street and the conversion of that building, 20 stories with 100 apartments and then taking the same amount and putting it into this building. There are only five stories at 1,000 Elm Street that are being converted into residential space. The rest of it will remain lease for commercial. It is not a one to one comparison and he can understand why they may not have had that information, but it is not a complete conversion at 1,000 Elm Street. He said when you look at the numbers, one of the commentators asked for the unit mix. Currently, what is proposed, which is always subject to modification and discussion with the Planning Board are 9 one-bedroom, 93 two-bedroom and 1 three-bedroom just to deal with the configuration. When you look at the math, it comes up to 2,900 SF and 1,000 SF per unit which are very healthy sizes for a two-bedroom. These

are not small units being jammed into a space. They will be very large for this particular market.

Attorney Cronin said a woman asked what market rent is and he thinks a lot of commentators touched on that. It changes all the time. For some people it is changing every month and it is a function of supply and demand. Even though these are not affordable, when you get to equilibrium, and bring new units onto the market, people will leave the lower tier and go up and to compete with them, you are going to have to change your rents. Right now, if these were available, keep in mind that there is a construction lead time and there is the stabilization period, you would be looking at the high teens to the mid or upper two's for the three-bedroom, but there is only one of those. He said it could be very different. He said a few gentlemen commented on the economy which we don't usually hear here, but things could be very different in a couple years, so those aren't set in stone.

Attorney Cronin said with respect to affordable or work force units, Brady Sullivan has worked with a number of properties and their expertise is repurposing existing buildings, which they have done. They are not configured, they are not managed and they are not structured to deal with a work force or some of the Housing Assistance Payments type contracts [HAP] that you hear which have additional regulation in things, but Arthur Sullivan has sat on the Board of NeighborWorks and his firm is a big contributor to that organization, which he thinks is one of the leaders in the affordable. They are not a for profit business so they have the luxury of doing some things that may not work on the numbers for a regular business organization. They will continue to do that.

Attorney Cronin said with respect to many of the comments, he gets the sense that they are concerned about apartments and that has been going on for decades. He said apartments are allowed to be here by zoning. The question they have is density, which has been uniformly approved and a lot of those comments that were made tonight were made to this Board when the gaslight units were being approved. He said he forgets the exact number in the parking garage, but there was some debate increasing spaces and people came in and said we use on street city parking and we have permits and we don't want anyone else to compete for that. He said he gets it. If he was doing that, he probably wouldn't want any competition and want the same space, but he thinks this Board cautioned those folks that there is no priority right to those spaces. He said everybody has an opportunity to get them and even though there is some walking, maybe from the lot down the street, they've got 280 spaces. Most people, if they have a spot that they know that they can go to and lock up, they are going to consider that whether they rent the unit or not. If there is someone who can't walk up the stairs to get there, they are probably going to go elsewhere.

Attorney Cronin said he thought one of the interesting comments was the comment about Manchester Place. He said for those who were around when that was being built, there was a lot of concern about impacts that that would have. He heard that the Amoskeag Terrace and Manchester Place lived in harmony. They have had no issues whatsoever there. In any one of these issues where people come and complain, safety is an issue. He said cars have got to go down that street and this isn't a new building that they are creating from virgin soil. It is a building that is going to have people that are going to come back and forth with cars. He said he has been in the City for a long time, up and down the streets almost every day and he doesn't think he has ever seen anyone, a pedestrian in that area, get struck by a car. Maybe there has been one and he hasn't seen much in the paper, but it is isolated. If there were a

problem with pedestrians getting hurt or injured there, he thinks we would all know about it. He said our Police Force does a great job of enforcement. There are some areas from time to time where people get a little bit fast, a little bit quick and a little bit negligent in their operations, but the police get down there and do some enforcement and it changes behavior.

Attorney Cronin said with the dog issue, if you own a dog, that doesn't give you permission to trespass on Amoskeag Terraces property. They have beautiful courtyards. There is no doubt about it and if he were them, he would want them to be protected. There is nobody in these apartments that have any right or authority to go on their land. If you look at every urban environment, he agrees. People living in all spaces, pets are a big deal. People love their dogs and their cats and if you go to New York City or if you have been there, not much grass there other than Central Park and you see a lot of people co-existing with dogs of all sizes and shapes. When you look at the public interest balancing and the standard set by the Supreme Court, these things are a little bit far afield. Will changing the density of this building, in which you can already have apartments, alter in a substantial way, the essential character of the neighborhood? We submit not. When you can already have apartments there, it is just a question of number and the building can accommodate the number. They think they meet the criteria.

Attorney Cronin said they are still willing to meet with the folks of Amoskeag Terrace and any of the other folks to discuss this if they are fortunate to be approved this evening. Someone commented on the application. This zoning which the Board knows, but for some people that may be their first time, it is one step in the process. The Planning Board process is very comprehensive. They study traffic, they study safety, they study lights, crosswalks, drainage, impacts, screening, trash, loading and a whole lot of things. He said Mr. Pratt and his team have a lot of work to do to get that and there will be public hearings which will take place which everyone will have more than enough opportunity to comment. He thanked the Board for all their time and patience this evening.

Chairman Breault turned the hearing back over to the Board.

Anne Ketterer said she just wanted to clarify one thing. She said Attorney Cronin said that there are large apartments and they just have a lot of square footage. Some of them have like 100 SF of circulation space, hallway space. She said his numbers may seem large, but the configuration of their units, are such that their hallways are incredibly long and so the livable space isn't as big as what they are representing. She said you have, in some cases, over 100 SF of corridors. She said she just wants to say that she thinks that this is a wonderful change of use and really urban areas truly benefit from residential downtown, particularly mixed-use when you have a commercial at the base and residential above. This is a boon for the City of Manchester. The only issue she has is with the quantity that they are requesting. When she looks at their floorplans, she sees that their floorplans, to her, prove that they are asking for too many. She asked how many of their units don't have windows? Seven or eight? She said they have units without windows. They are shoehorning them into every little space and she knows that this floorplan has worked in their other buildings and she thinks that many of us have actually been in their other buildings. She said those are lovely, the old mills that she is referencing. She asked how high those ceilings are just out of curiosity. She said they are about 12' and this is going to be 9' or maybe 10', so these are also tall ceilings, but the volume isn't the same. She said they are taking a building that was built in the 1980's or 1990's. Attorney Cronin said it was acquired then but it has been around for years. Ms.

Ketterer said she was just wondering what year it was built. Mr. Lewis said he thinks in 1973.

Ms. Ketterer said the floor plan that they used in the old mill buildings where they have 12' ceiling heights, works really well for that building. She said she doesn't know that it applies here. When she looks at their floor plans, she thinks their proposal, its merit is great, but 110 units to her, doesn't fit. You don't have enough space for amenities and you have too many units without any windows at all. And yes, the units are large, but that is because they are so deep that the corridors are incredibly long and windy. Personally, what she would like is to see fewer units, more accommodating to the smaller building.

Attorney Cronin said he thinks tonight he said they would come down from the 110 to 100 units. He said if this was the Architectural Board of Adjustment, he would say that maybe those are appropriate comments with respect to the height of the units. In his view, the market should really dedicate that if people want to live in those units. He said he was as surprised as Ms. Ketterer when he first went into a Millwest Unit and he said these bedrooms have no windows in them. He said people desire those. Ms. Ketterer said respectfully, if it were only the market that dictated it, you wouldn't have to be here asking for a variance. She said that's her only point. Attorney Cronin said that is not true. He said the question Ms. Ketterer asked and the concern she raised was about no windows in the bedrooms. He said she seemed to be concerned about that. He was telling her that those are not novel. They are not new. They are in demand. People in the marketplace like those units. They are not for everyone, but some people that work third shift, they want darkness. Some nurses that work at night, they like those units and they have had no problem renting them, so his feeling is, in terms of the configuration of the unit and whether one window or three windows or no windows, they aren't forcing people to rent these. They have an opportunity to look at them and inspect them and say, man, this doesn't have any windows. I don't like this and I choose not to rent it, or I choose to rent it at a lower price. That is the market forces rather than government dictating how many windows you have in a unit. Ms. Ketterer said government doesn't dictate the windows, government dictates the quantity and that is what we are here to address. Attorney Cronin said that is absolutely right and this application is consistent with the number of your downtown applications in terms of density. He said you have a building that is pre-existing and you have apartments to scale, that are larger in many respects, regardless of their geometry, than many that have improved by variance and density here.

Attorney Cronin said don't forget, the City in their zoning and the work that they are doing to change it has recognized that the density calculation is not appropriated. They are going to change and they have been working to change it. They say that this one on the books doesn't work. Ms. Ketterer said they agree that the existing Zoning Ordinance calculation approves at 37 or 36 units, is not enough. She said on that we agree and she wants to point that out. Attorney Cronin said as far as the comment, and if they were talking about it, then they wouldn't have to be for a variance. He said all the other people that have owned these buildings that have been here for the last three years getting the same variance that are making great improvements to the City by investing dollars, increasing tax base and getting places for people to live, they wouldn't be here either, right? They are here because they need a variance because the Ordinance doesn't rationally apply to these properties. Ms. Ketterer said we agree on that. She said it is the quantity. She said just to remind Attorney Cronin of the point that she was making earlier on. The quantity of 110 or 100, she feels is too high. She said she also agrees that the quantity of 36 is too low. Attorney Cronin said so noted.

Joe Prieto asked Attorney Cronin how he felt about the abutter's offer to meet with them. He said it seems like the public has legitimate concerns and he thinks that is something that the Board should consider and it gives him pause, so how does he feel about that offer. He said he knew they were on a timetable and all that, but what are his thoughts on that. Attorney Cronin said he is always willing to meet and they have neighborhood meetings all the time and they think they are productive. This is about a density and it is pretty narrow and it is really not going to address the concerns that those folks have with respect to parking, with respect to the dog waste and with respect to the trash. Trash, he might add that has been removed safely from that building for decades, probably since 1973. He said they are happy to meet. He said he thinks their concerns are more Planning related and it probably makes more sense for them not only to meet with Amoskeag Terrace, but do like they did over at Wellington and some of the other places and get the ward Alderman in and see if there are any folks down here, maybe downtown Manchester and say, let's have a little community meeting here and talk outside of the hearing room where we can get all of the feedback. He said putting this off, as you noted, timelines, construction schedules and all those things that go into these factors, it just puts everything off. They have discussed possibly meeting and putting it off but he can't see what would change. The gentleman that spoke for the Terrace and all of his colleagues there are obviously well organized and well-spoken and he thinks they conveyed their concerns.

Chairman Breault said he agreed that tabling this is not going to settle anything pertaining to those issues that they are bringing up. That is all Planning Board issues and not this Board's purview. He said we are here to vote on density and he reminded this Board that across the street from this property, we granted a variance for density and down the street and everywhere in Manchester, we have been increasing density and it is consistent with the new Master Plan that is being proposed for the City. They speak of density downtown and making it a walkable neighborhood and this is just another facet of that feature. He said he thinks the Board needs to vote on this and let the applicant work with the abutters. They are going to have to go through site plan approval and they are going to need a conditional use permit, so they have a few steps to take. He said we are the first ones in line, so let's get them to the Board for the next step and see where they can take this.

Anne Ketterer said there is one caveat though, since we are speaking about density and the issues the abutters were addressing are really Planning Board and she agrees with the Chairman, but there is a power of numbers to those issues that they brought up and the density addresses that directly. When you are allowed 36 units and you are applying for 101, that is almost three times, so the issues that they bring up, still exist even if Brady Sullivan built 36 units, but now they are three times more of an issue. She said she just wants to say she thinks the abutter issues do directly relate to what the Chairman just said and that goes back to what Mr. Prieto said which is do we just ignore what the abutters say.

Chairman Breault said we've got a building here that can handle 100 units as they have drawn. If we were to reduce the density, the units would be larger and units of three and four-bedrooms, you wind up having roommates, more people and more cars than you would if you had a single person living in a two-family or a single-family. He said you've got a building with a certain amount of square footage and you are going to do something with that square footage. Obviously, commercial space isn't working for that. It isn't working anywhere in the State at this point. There is an oversupply of commercial space as people are working from home. SHNU just renovated that whole mill building and you walk in there and they might

Exhibit E

Proposed Findings of Fact

1. Granting the variance would be contrary to the public interest and the spirit of the ordinance because the increase of density would have a negative impact on the available parking for the surrounding community, would cause unnecessary congestion in the alleyway behind the subject property with various deliveries and services to so many residents, and would likely have a detrimental effect on the extremely limited landscaping and green space of surrounding properties in an area.
2. The loss to the Applicant, which consists of having to endure the market conditions that the rest of the community must also endure, is outweighed by the gain to the general public in preventing the negative impacts discussed in number 1 above.
3. The board heard no credible evidence to suggest that the values of surrounding properties would not be diminished.
4. The board did not find the property to be sufficiently unique in comparison to other properties in the area given that it is a regularly shaped lot, with a typical office building, in the CBD district. Further, the applicant suffers no discernable hardship because of the nature of the property, but instead only advances the notion of a hardship based on current economic conditions that are experienced by all residents of the city. Further, the board found that a fair and substantial relationship precisely exists with respect to the application of the density regulations of the ordinance as applied to the subject property, for all of the reasons discussed in number 1 above.